



South Coast Air Quality Management District

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BOARD MEETING DATE: May 4, 2007

AGENDA NO.

PROPOSAL: Adopt Proposed Amended Regulation III - Fees

SYNOPSIS: Staff is proposing an increase of 3.3% equivalent to the change in the 2006 Consumer Price Index for all fee categories, except those for which the Board last year adopted a 3-year phased fee increase, which includes a 10% increase this year to continue cost recovery efforts and fund the AQMD FY 2007-08 Budget. Staff is also proposing a new provision to allow AQMD to recover costs to defend issuance of a permit, fees to implement a new voluntary certification program for consumer cleaners used at institutional and commercial facilities, and also some minor language to clarify or correct Regulation III.

COMMITTEE: Administrative, April 13, 2007; Stationary Source, March 23, 2007

RECOMMENDED ACTION:

Adopt the attached resolution:

1. Certifying the Notice of Exemption for Proposed Amended Rules 301 – Permitting and Associated Fees, 303 – Hearing Board Fees, 304 – Equipment, Materials and Ambient Air Analyses, 304.1 – Analyses Fees, 306 – Plan Fees, 307.1 – Alternative Fees for Air Toxics Emissions Inventory, 308 – On-Road Motor Vehicle Mitigation Options Fees, 309 – Fees for Regulation XVI, 311 – Air Quality Investment Program (AQIP) Fees, and Proposed Rule 313 – Authority to Adjust Fees and Due Dates.
2. Adopt Proposed Amended Regulation III - Fees to:
 - a) Increase all fees except those for where the Board last year adopted a 3-year phased fee increase, including a 10% increase this year, by a rate of 3.3% equivalent to the 2006 change in the California Consumer Price Index (CPI), to adjust for inflation and continue better recovering program costs; and

- b) Establish provisions to allow AQMD to recover costs to defend the issuance of a permit, implement a voluntary certification program for consumer cleaners used at institutional and commercial facilities and clarify or correct certain existing language, with negligible or no fiscal impact.

Barry R. Wallerstein, D.Env.
Executive Officer

EC:LT:LB:RP:HP

Background

Regulation III – Fees, establishes the fee rates and schedules associated with permitting, annual renewals, emissions and other activities that help fund most of AQMD's regulatory programs and services. Shortfalls exist despite the significant budget reductions adopted and continuous improvements in performance and efficiency. Key contributors to the shortfalls include the declining emissions fee revenues, and legally mandated retirement contributions. In addition, due to the provisions of Rule 2002(f)(1)(A) effective January 2007, NO_x emissions fees from RECLAIM sources will decline due to a mandatory annual reduction each year.

To address the shortfall in revenues, the Board adopted amendments to the fee rule at the June 9, 2006 public hearing to more fully recover specific program costs. The adopted amendment included a 3.65% fee increase (the change in the 2005 California Consumer Price Index) for all source categories for FY 2006-07, except for permitting, annual renewal and emission fees which are to be increased by a total of 10% annually for 3 years, starting last year, to more fully recover program costs. This increase has already been adopted and includes a 10% increase this year.

The current proposal seeks to increase fees other than Permit Processing, Annual Operating Permit Renewal and Annual Operating Emissions Fees by the change in the 2006 CPI. Increasing fees by the change in the 2006 CPI will relieve inflationary pressure on the cost recovery action taken by the Board at the June 9, 2006 Board hearing and as such seeks to preserve the goal of closely aligning revenues with program costs. Other amendments are administrative in nature and include clarification and correction of existing language with negligible or no fee increase. The proposed amendments also include a provision to recover the costs borne by the District in defending a permit issued if it is challenged in court. This fee would allow the District to be reimbursed for all reasonable and necessary costs paid by the District to defend the issuance of a permit against a legal challenge. In addition, the AQMD will be implementing a new program for the voluntary registration of consumer cleaners used at institutional and commercial facilities. A new fee schedule is being added to recover the AQMD costs to test and certify these products.

California Health and Safety Code Section 40500, et seq., established AQMD's authority to adopt rules and regulations, including fee schedules intended to cover AQMD's actual costs of cleaning the air. There are currently twelve rules within Regulation III - Fees that set fees and procedures in three major categories:

- (1) Permitting processing fees;

- (2) Annual fees; including Annual Permit Renewal and Annual Operating Emission fees for facilities that have the potential to emit or have emitted toxic or criteria air contaminants; and
- (3) Other District services, including variances from the Hearing Board, compliance monitoring and testing such as source testing, review of emission control plans, registration programs, Rule 2202 plans, etc.

California Health and Safety Code sections relating to the fees of the AQMD allow staff to align fees with the costs of services. The current proposal seeks to continue the goal of maintaining better cost recovery by compensating for inflation. The proposed Fiscal Year 2007-08 Budget and Work Program will be incorporated by reference in the final Board package.

Proposal

The amendments being considered for Regulation III focus on better recovering the costs of the various stationary source programs and clarifying existing language in the rule. All fees are proposed to be increased by the change in the 2006 Consumer Price Index (CPI) except that no fee increase is proposed for Permitting, Annual Renewal and Emissions fees for which a 10% increase for FY 07-08 and a further 10% increase for FY 08-09 was adopted in June, 2006.

The following summarizes the proposed amendments and the anticipated cost recovery, as shown in Table 1.

Specifically the proposed amendments are as follows:

1. Consumer Price Index (CPI) Adjustment. A 3.3% rate increase in all fees reflecting the 2006 California Consumer Price Index (CPI) increase except Permit Processing Fees, Annual Operating Permit Renewal Fees and Annual Operating Emission Fees. The Governing Board amended Rule 301 – Permitting and Associated Fees and adopted Rule 313 – Authority to Adjust Fees and Due Dates on June 2, 2006 to increase those three fees by 10 percent in FY 2007-08; therefore, no change is recommended for those three fee categories; and
2. Addition of fees to implement the Voluntary Certification of Consumer Cleaning Products program, and a provision to recover cost of defending permits issued. This provision requires permit applicants or permit holders to reimburse the District for legal costs in defending issuance of a permit. These costs may be waived if they would create an unreasonable hardship for the permit holder. The Clean Air Choice Cleaner Certification program fee that is being proposed would allow the implementation of a new voluntary program that would model itself

after the highly successful Clean Air Solvent Certification program which has 73 participating companies and over 140 certified products. The positive, voluntary program would certify products that met criteria intended to reduce air pollution and consider other factors that contribute to improving the environment and protecting human health. It is expected that such a program would positively influence consumer behavior in selecting ultra-low VOC products and foster the marketing of ultra-low polluting technologies.

3. Correction and clarification with minimal or no fiscal impact.

A summary of the proposed amendments in strikeout/underline format is included as Attachment A.

Table 1 below summarizes the estimated net increased revenue for FY 07-08 over FY 06-07 revenue with the adoption of the proposed CPI rate increase in fees.

Table 1. Summary of Estimated Increased Cost Recovery for FY 07-08

Provision	Estimated Increased Revenue in Millions of Dollars
Impact of 2006 Amendment*	5.88
Proposed 3.3% CPI Increase	0.07
301(c)(2)(A) Correction	0.00
Voluntary Certification Program	0.02
Expedited CEQA Fee Correction	< 0.01
Expedited CEMS, FSMS & ACEMS Correction	< 0.01
Defense of Permit	0.25
Summary of Permit Fee Rate Table Correction	0.00
Table IIC Correction	0.02
Rule 306(c)(i) Clarification	0.00
TOTAL	< 6.26

* 10% increase in Permit, Annual Operating Permit Renewal and Annual Operating Emissions fees

AQMP and Legal Mandates

The fee rules are not part of the AQMP. California Health and Safety Code §§ 40500 et seq. established the authority to “adopt fee schedules for the issuance of variances and permits to cover the reasonable cost of permitting, planning, enforcement, and monitoring related thereto,” and to assess fees for the approval of plans for the control of air contaminants and for regulatory programs affecting indirect and area sources (H&S §§ 40522 and 40522.5). California Health and Safety Code Sections 40500.1, 40510, 40510.5 and 40523 authorize AQMD to increase fees consistent with annual increases in the California Consumer Price Index (CPI).

CEQA & Socioeconomic Analysis

AQMD staff has reviewed the proposed amendments to Rules 301, 303, 304, 304.1, 305, 306, 307.1, 308, 309, 311, and 313, and because the proposed project involves the modification and structuring of charges by public agencies for the purpose of meeting operating expenses and financial reserve requirements, it is statutorily exempt from CEQA, pursuant to state CEQA Guidelines § 15273 – Rates, Tolls, Fares, and Charges. A Notice of Exemption will be filed with the county clerks immediately following adoption of the proposed project.

Table 1 compares the revenue changes between fiscal year 2007-2008 and fiscal year 2006-2007 as a result of fee rate increases approved in 2006 and the proposed amendments. All revenue sources are projected to increase in the 2007-2008 fiscal year with the exception of source test and lab analysis fees and other revenues. The smaller projected revenue increase in emission fees (1.75%) than the 10% increase in emission fee rates reflects the continual downward trend in emissions as air gets cleaner. The smaller projected revenue in permit fees (5.83%) reflects the processing of fewer Title V permits. The reduction in Other Revenues is due to the fact that the 2006-2007 fiscal year had one-time settlements of \$6.5 million. The increase in hearing board fees is due to the anticipated higher level of hearing board activity for the next fiscal year.

Table 1

Revenue Comparison Between FY 2006-2007 and FY 2007-2008

Category	Estimated FY 2006- 2007 Revenue	Projected FY 2007- 2008 Revenue	% Change in Fee Rates	Changes in Revenue	
				\$	%
Emission Fees	\$21,700,000	\$22,080,400	10%*	\$380,400	1.75%
Annual Operating Fees	34,670,000	38,280,000	10%*	3,610,000	10.41%
Permit Processing Fees	17,256,700	18,263,250	10%*	1,006,550	5.83%
Mobile Source/Clean Fuels	21,702,500	22,690,050	N/A	987,550	4.55%
Source Test & Lab Analysis	490,000	451,400	3.3%	-38,600	-7.88%
Hearing Board Fees	437,600	686,940	3.3%	249,340	56.98%
Transportation Program Fees	1,000,000	1,042,530	3.3%	42,530	4.25%
Other Revenues	28,052,000	21,472,900	N/A	-6,579,100	-23.45%
Total	\$125,308,800	124,967,470		-\$341,330	-0.27%

* Approved in 2006

The only other proposed amendment to Regulation III is to allow the AQMD to implement a voluntary certification program for consumer cleaning products used at institutional and commercial facilities, and clarify or correct existing rule language. These amendments have either negligible or no fiscal impact..

Resource Impacts

No additional resource impacts are expected.

ATTACHMENT A

Provision ¹	Proposed Amendment						
301(c)(2)(A) [Correction]	The permit processing fee shall be as established in the Summary Permit Fee Rates - Change of Operator table for equipment at one location so long as the new operator files an application for a Permit to Operate within one (1) year from the last renewal of a valid Permit to Operate and does not change the operation of the affected equipment. All fees due, within the past 3 years, from the previous facility for equipment for which a Change of Operator <u>Location</u> application is filed, and all facility-specific fees (such as “Hot Spots” fees), must be paid before the Change of Operator <u>Location</u> application is accepted.						
301(r) [Cost Recovery - New Voluntary Certification Program]	<p>(r) <u>Fees for Certification of Consumer Cleaning Products Used at Institutional and Commercial Facilities</u></p> <p><u>Persons applying for certification of Consumer Cleaning Products Used at Institutional and Commercial Facilities shall pay the following fee for each product to be certified:</u></p> <table border="1"> <tr> <td><u>Gas Chromatograph/Mass Spectrometry Analysis</u></td><td><u>\$306.65 for five or fewer compounds</u> <u>\$28.45 for each additional compound</u></td></tr> <tr> <td><u>Time and material portion thereof</u></td><td><u>\$107.88 per person per hour or prorated</u></td></tr> <tr> <td><u>Clean Air Choice Cleaner Certificate</u></td><td><u>\$156.88</u></td></tr> </table> <p><u>At the time of filing for certification of any Consumer Cleaning Products Used at Institutional and Commercial Facilities, the applicant shall submit a fee of \$723.10 for each product to be tested. Adjustments, including refunds or additional billings, shall be made to the submitted fee as necessary. A Consumer Cleaning Products Used at Institutional and Commercial Facilities Certificate shall be valid for five (5) years from the date</u></p>	<u>Gas Chromatograph/Mass Spectrometry Analysis</u>	<u>\$306.65 for five or fewer compounds</u> <u>\$28.45 for each additional compound</u>	<u>Time and material portion thereof</u>	<u>\$107.88 per person per hour or prorated</u>	<u>Clean Air Choice Cleaner Certificate</u>	<u>\$156.88</u>
<u>Gas Chromatograph/Mass Spectrometry Analysis</u>	<u>\$306.65 for five or fewer compounds</u> <u>\$28.45 for each additional compound</u>						
<u>Time and material portion thereof</u>	<u>\$107.88 per person per hour or prorated</u>						
<u>Clean Air Choice Cleaner Certificate</u>	<u>\$156.88</u>						

	<p><u>of issuance and shall be renewed upon the determination of the Executive Officer that the product(s) certified as a Consumer Cleaning Products Used at Institutional and Commercial Facilities continue(s) to meet Consumer Cleaning Products Used at Institutional and Commercial Facilities criteria, and has not been reformulated.</u></p>
<p>301(u)(2) [Correction]</p>	<p>CEQA Fee</p> <p>Fees for requested expedited CEQA work will be an additional fee based upon actual review and work time billed at a rate for staff overtime which is equal to the staff's hourly rate of \$104.43121.91 for FY 07-08 and 134.10 for FY 08-09 plus \$54.1763.23 for FY 07-08 and \$69.56 for FY 08-09 per hour (one half of hourly plus mileage).</p>
<p>301(u)(3) [Correction] [Clarification]</p>	<p>CEMS, FSMS, and ACEMS Fee</p> <p>Fees for requested expedited processing of CEMS, FSMS, and ACEMS applications will be an additional fee based upon actual review and work time billed at a rate for staff overtime which is equal to the staff's hourly rate of \$104.43121.91 for FY 07-08 and 134.10 for FY 08-09 plus \$54.1763.23 for FY 07-08 and \$69.56 for FY 08-09 per hour (one half of hourly plus mileage). The established "Basic Fee" schedule found in the CEMS, FSMS and ACEMS Fee Schedule in Table IIC shall be paid at the time of filing with the additional overtime costs billed following project completion (adjustments to the final bill will be made accordingly for the processing time which is included in the minimum fee, and for the "Maximum Fee" offset as a result of the expedited fee schedule).</p>
<p>301(aa) [Cost Recovery - New]</p>	<p><u>Defense of Permit</u></p> <p><u>Within 10 days of receiving a complaint or other legal process initiating a challenge to the AQMD's issuance of a permit, the AQMD shall notify the applicant or permit holder in writing. The applicant or permit holder may, within 10 days of posting of the notice, request revocation of the permit or cancellation of the application. An applicant or permit holder not requesting revocation or cancellation within 10 days of receipt of notice from the District shall be responsible for reimbursement to the District for all reasonable and necessary costs to defend the issuance of a permit or permit provisions against a legal challenge, including attorney's fees and legal costs. The Executive Officer will seek reimbursement of fees and legal costs at the conclusion of the legal challenge. The Executive Officer may in his discretion, waive all or any part of such costs upon a determination that payment for such costs would impose an unreasonable hardship upon the applicant or permit holder.</u></p>

301 Summary of Permit Fee Rates [Correction]	FY 07-08-FY 08-09			
	Schedule	Permit Processing Fee	Change of Condition	Alteration/ Modification
	A	\$1,287.22	\$670.49	\$1,287.22
	A1	\$1,287.22	\$670.49	\$1,287.22
	B	\$2,051.52	\$1,016.31	\$2,051.52
	B1	\$3,244.91	\$1,758.90	\$3,244.91
	C	\$3,244.91	\$1,758.90	\$3,244.91
	D	\$4,478.51	\$3,008.18	\$4,478.51
	E	\$5,148.93	\$4,416.74	\$5,148.93
	F	\$12,939.58+T&M	\$6,448.14	\$10,257.62+T&M
	G	\$15,272.72+T&M	\$13,873.64	\$12,590.75+T&M
	H	\$23,666.52+T&M	\$25,206.34	\$20,984.56+T&M
301 Table IIC [Correction]	TABLE IIC CEMS, FSMS, & ACEMS FEE SCHEDULE			
	Certification Review			
	CEMS and FSMS Review1	Basic Fee ²	Maximum Fee	
	Any combination of pollutants, diluent, flow, or other parameter ³ for:			
	One to two components	\$2,508.44 <u>\$2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09	\$4,491.26 <u>\$5,243.05</u> for FY 07-08 and <u>\$5,767.36</u> for FY 08-09	
	Three to four components	\$3,322.45 <u>\$3,526.00</u> for FY 07-08 and <u>\$3,878.59</u> for FY 08-09	\$7,973.83 <u>\$9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09	
	For each additional component beyond four, the following amount is added to the fee for four	\$0.00	\$2,041.58 <u>\$2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09	

	components		
	For time-sharing of CEMS, the following amount is added to any fee determined above	\$0.00	\$2,041.58 <u>2,383.32</u> for FY 07-08 and <u>\$2,621.66</u> for FY 08-09
	ACEMS Review	Basic Fee⁴	Maximum Fee
		\$2,508.44 <u>2,928.33</u> for FY 07-08 and <u>\$3,221.17</u> for FY 08-09	\$7,973.83 <u>9,648.33</u> for FY 07-08 and <u>\$10,613.17</u> for FY 08-09
301 Table IIC CEMS, FSMS & ACEMS FEE Schedule Footnote 2 [Correction]	Excess hours beyond these will be charged at \$104.43 <u>121.91</u> for FY 07-08 and <u>134.10</u> for FY 08-09 per hour, to the maximum listed in the table.		
306(i)(1) [Clarification]	Plan Filing <u>or Submittal Fee</u> [change to heading only; not to rule text] In addition to payment of the filing fee, the initial payment for plan evaluation fees shall be \$265.51 paid at the time of filing. This fee shall not apply to plans pursuant to Rule 403 – Fugitive Dust, and Rule 1166 – Various Location Plans issued pursuant to the Decontamination of VOC Soil, for which the initial payment for plan evaluation fees will be \$104.43. <u>This fee shall also not apply to Rule 1133 registration and annual updates, for which the plan submittal fee will be charged solely in accordance with paragraph (c) of this Rule.</u> The adjustment to plan evaluation fees will be determined at the time a plan is approved or rejected and notification of the amount due or a refund will be made.		

¹ corresponds to the new provision section numbering where a change has taken place

Necessity and Equity

Increasing all other non-permit related fees by the change in the 2006 CPI is necessary in order to relieve inflationary pressure on the cost recovery action taken by the Board at the June 9, 2006 Board hearing and as such seeks to preserve the goal of more closely aligning revenues with program costs. By uniformly increasing all non-permitting, non-emissions and non-annual renewal fees by the CPI the equitable apportionment of the fee increase to sources will remain, while the amount each will pay will continue to more closely recover the actual costs to administer these programs.

The increase in fees for voluntarily requested expedited CEQA work is necessary in order to recover the cost of work provided on an overtime basis. It is equitable because the fee is corrected to align it with the proportionate increase in non-expedited CEQA work. In addition the cost is recovered specifically from the applicant that voluntarily requests expedited processing.

The fee for voluntary Certification of Consumer Cleaning Products Used at Institutional and Commercial Facilities is necessary to recover the specific cost of the program and it is equitable because the fee offsets the cost of the services provided which are voluntary.

The increase in fees for Table IIC - CEMS, FSMS, & ACEMS FEE SCHEDULE items are necessary in order to correct the fee for these items since these are permit related fees. They are equitable since increased revenues are proportionately applied to programs incurring such costs.

The proposed amendment requiring reimbursement to the District by an applicant or permit holder for all reasonable and necessary costs to defend the issuance of a permit or permit provisions against a legal challenge is necessary in order to recover the specific costs of such a defense. It is equitable since the fee charged is used to offset the cost of the specific services provided that are in addition to those required to process a permit. The applicant or permit holder may also optionally within 10 days of posting of the notice, request revocation of the permit or cancellation of the application.